

REMARKS

The previous amendment to paragraph [0009], which was objected to on grounds of new matter, has been deleted.

Claim 1 has been amended to more particularly point out and distinctly claim that which applicants regard as their invention, and withdrawn claims 7-12 have been canceled without prejudice to, or disclaimer of, Applicants' rights to prosecute the subject matter thereof in an appropriate divisional application. New claims 13 and 14 have been added directed to preferred embodiments of the invention of claim 1. Support for newly submitted claims 13 and 14 is found in the specification, *inter alia*, in Examples 2 to 5 on page 6. Claims 1-6, 13 and 14 are presented for further examination.

The phrase "substituted by" in claim 1 has been replaced by the word "contain". Support for this amendment is found in the specification at line 4 of paragraph [0015]. Claim also has been amended to make it clear that it is the polyol which may be substituted by or contain amino groups, thiol groups or carboxy groups. Reconsideration and withdrawal of the §112 rejections are respectfully requested.

The rejection of claims 1-6 under 35 U.S.C. §103(a) over DE 198 22 944 is respectfully traversed. The statement of rejection states that "DE-198 22 944 discloses polyol premixes". This is not correct. DE 198 22 944 does not describe any premix of polyol and blowing agent. Rather DE 198 22 944 (see column 4, lines 36-39) states that the blowing agent can be added to propolymers of polyol and poly- or diisocyanate (Cf. column 4, lines 54-56 of US 6,380,275) and further states (see column 5, lines 9-11) that the polyurethane foams are produced in a low pressure installation in which it is possible to meter three components, i.e., polyol, polyisocyanate and blowing agent (Cf. column 4, lines 12-14 of US 6,380,275). This propolymer (or prepolymer) of DE 198 22 944 is not the same as, and should not be confused with, the claimed premix. A propolymer containing both a polyol and a polyisocyanate is a reactive mixture which will polymerize to form a polyurethane polymer. The claimed premix, on the other hand, consists

essentially of polyol, blowing agent and phosphorus compound and is storage stable. It does not contain any polyisocyanate and does not react by itself to form a polymer. Indeed, its very purpose is to be a storage stable reactant. Only when subsequently mixed with a polyisocyanate will it react to form a polymer. Of course, because the polyisocyanate in the prepolymer of DE 198 22 944 renders the mixture reactive, it necessarily affects the basic and novel characteristics of the mixture. Consequently, the "consisting essentially of" language of the present claims excludes the prepolymer of DE 198 22 944 and clearly distinguishes the presently claimed invention from the DE 198 22 944 prepolymer mixture. Reconsideration and withdrawal of the rejection are accordingly, respectfully requested.

The rejection of claims 1-6, under 35 U.S.C. §103(a) over US 6,080,799 or US 6,380,275, or both, is also respectfully traversed.

With regard to US 6,380,275, in addition to being subject to the same deficiency as its German priority application, DE 198 22 944, discussed above, this patent is not proper §103(a) prior art against the present application because the invention claimed in the present application and the application which matured into US 6,380,275 were commonly owned by Solvay Fluor & Derivate GmbH at the time the invention claimed in the present application was made.

With regard to US 6,080,799, Applicants again point out that Example 1 of Kruecke et al., '799 contains an aromatic brominated polyether polyol, which is an outstanding flame retardant (see Kruecke et al. '275, column 3, lines 23-25). Thus Kruecke et al. '799 does not disclose or suggest a premix consisting essentially of a polyol, a binary blowing agent and a phosphorus compound as claimed. The brominated polyether polyol flame retardant materially affects the basic and novel characteristics of the mixture and is therefore excluded by the "consisting essentially of" language of the claim.

Hinz does not rectify the deficiencies of Kruecke '799. Hinz generally discourages the use of highly fluorinated hydrocarbons (Hinz, column 8, lines 26-

30). Hinz also only teaches incorporating assistants and/or additives (e.g., flameproofing agents) **into the reaction mixture** (Hinz, column 9, lines 23-29). Hinz likewise fails to disclose or suggest the use of premixes as claimed. Thus, even when the disclosure of Hinz is combined with Kruecke '799 (or the claims of Kruecke '799) the result would not lead a person skilled in the art to the presently claimed invention. Therefore, reconsideration and withdrawal of the rejection are respectfully requested.

The obviousness-type double patenting rejection of claims 1-6 over Kruecke et al. '275 must likewise fall with the §103 rejections over DE 198 22 944 and US 6,380,275, since if the entire disclosure fails to render the present invention obvious, then the invention can hardly be considered obvious over the claims alone of the '275 patent.

Similarly, the obviousness-type double patenting rejection of claims 1-6 over Kruecke et al. '799 must fall with the §103 rejection over the '799 patent, since if the entire disclosure of the '799 patent fails to render the presently claimed invention obvious, then the present invention would not be obvious in view of the more limited disclosure of the '799 patent claims.

The obviousness-type double patenting rejection of claims 1-6 over co-pending application no. 11/835,083 is believed obviated by the concurrently submitted Terminal Disclaimer.

Attention is again directed to the Declaration evidence of record which shows that a composition according to the presently claimed invention unexpectedly and surprisingly exhibit an increased flash point or no measurable flash point at all. This unexpected and surprising beneficial result is additional evidence of the non-obviousness of the presently claimed invention. The Examiner is respectfully requested to consider this evidence with respect to newly submitted claims 13 and 14.

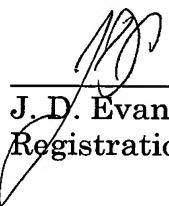
For the foregoing reasons, the invention as presently claimed is respectfully submitted to be patentable, and prompt, favorable action on the application is earnestly solicited.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned at (202) 624-2845 would be appreciated since this should expedite the examination of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #037110.52632US).

Respectfully submitted,

July 3, 2008



J. D. Evans
Registration No. 26,269

CROWELL & MORING LLP
Intellectual Property Group
P.O. Box 14300
Washington, DC 20044-4300
Telephone No.: (202) 624-2500
Facsimile No.: (202) 628-8844
JDE:moi (doc. #6032186)